IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CIVIL REVISION APPLICATION No 1416 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TAX RECOVERY OFFICER-I

Versus

BANK OF BARODA

Appearance: MR MANISH R BHATT for the Petitioner.
MR KI SHAH for Respondent No. 1
RULE UNSERVED for Respondent No. 2-5

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/02/2004

ORAL JUDGEMENT

The petitioner is original defendant No.5 of Special Civil Suit No.113 of 1992, which is pending before the Civil Judge (Senior Division), at Valsad. The said suit is filed by respondent No.1, Bank of Baroda. In the aforesaid suit, interim applications were given by the Bank at Exhibits 34 and 63, requesting the trial court to permit the Bank to sell the hypothecated goods. After hearing the present petitioner, who is defendant No.5 in the suit, the trial court came to the conclusion that the properties have been attached by defendant No.5 (present petitioner) prior to the filing of the suit and without setting aside the said attachment order, it is not possible for the Court to give permission to the plaintiff to sell out the properties of defendant No.1. In view of the said reasoning, the trial court rejected

both the said applications. However, according to Mr.M.R. Bhatt, learned Advocate for the petitioner, there are some observations made by the trial court in connection with the prior charge over the suit property. Since the trial court had already rejected the applications of the original plaintiff and since this revision application is filed against an interlocutory order, the same is not required to be entertained, especially when the interests of the present petitioner are also protected as the Court has not given permission to sell the property in question. It is clarified that whatever may be the incidental observations in connection with the first charge over the suit property, all those observations are to be treated as tentative in nature and all those questions, if required to be decided, are to be decided only in the suit and whatever observations which are made in the interim order may not be taken into consideration at the time of deciding the suit and all those issues are kept open, including the question of first charge over the suit property.

Subject to what is stated above, the revision application is rejected. Rule is discharged, with no order as to costs.

3rd February, 2004 (P.B. Majmudar, J.)

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(apj)